

18
NO. 773
.....

FILED
DEC 21 1944

CHARLES ELMORE DROPLIN
CLERK

Supreme Court of the United States
(OCTOBER TERM, 1944).

OILS, Inc., an Oklahoma corporation,
Petitioner,

V E R S U S

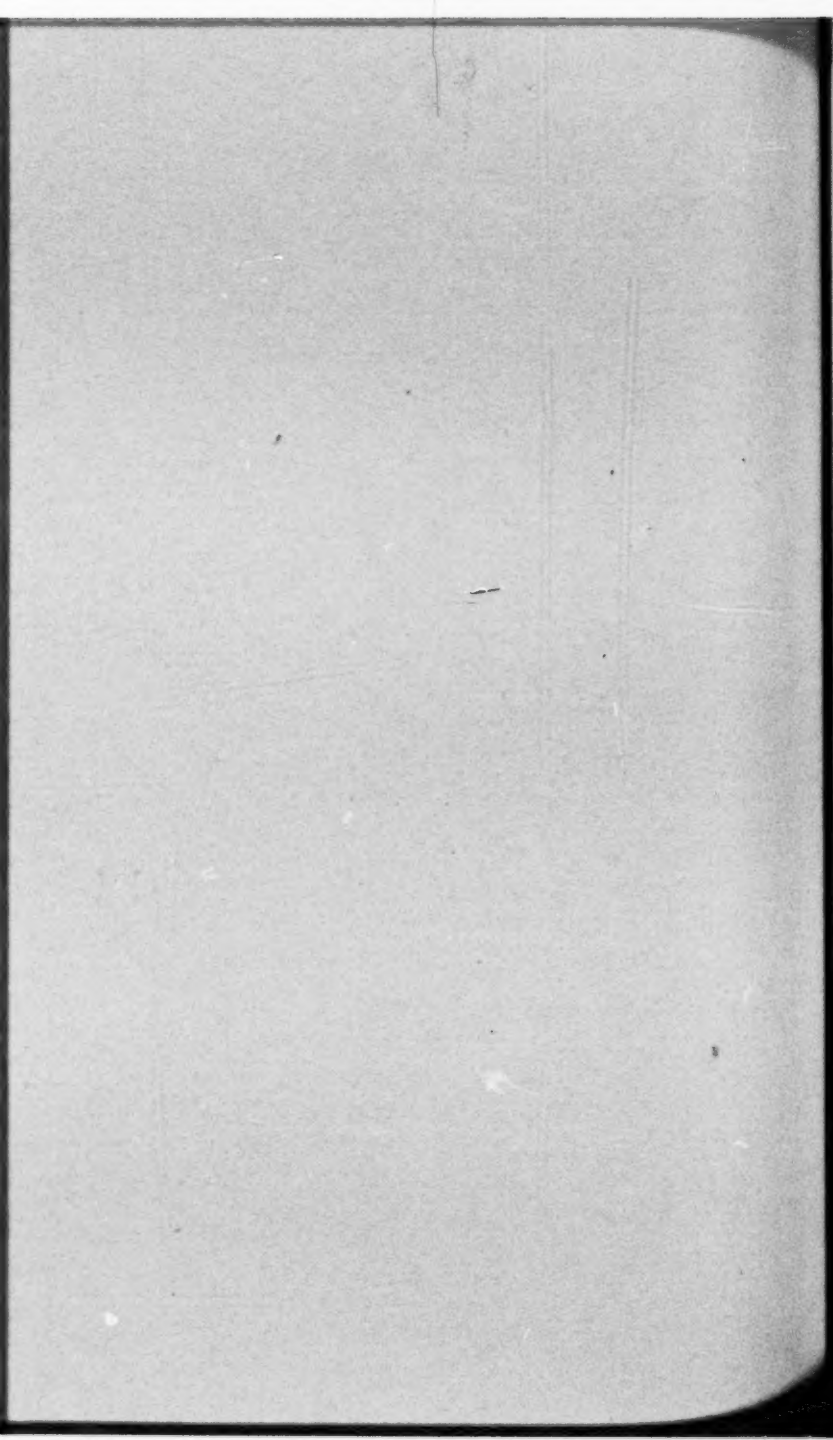
G. T. BLANKENSHIP; DAISY O. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE TENTH CIRCUIT,
AND SUPPORTING BRIEF**

HAL WHITTEN,
1030 Hightower Building,
Oklahoma City, Oklahoma,
Attorney for Petitioner, Oils, Inc.

WHITTEN & WHITTEN,
Of Counsel.

December, 1944.



INDEX

	Page
Petition for Writ of Certiorari.....	1
II. Decisions Below	6
III. Jurisdiction	6
IV. Questions Presented	6
V. Reasons Relied Upon for the Allowance of the Writ.....	7
Brief in Support of Petition.....	9
Opinions	9
Jurisdiction	9
Statement of the Case.....	10
Specifications of Error.....	12
Summary of Argument.....	13
Argument	14
<p>Point 1. A new bill filed by order of the court in an equity case, continuing the subject-matter of the parent action to recover the res involved in the original case, joining new parties defendant, and over which latter bill the court retains jurisdiction, is an ancillary action, deriving its jurisdictional features from the parent case, and diversity of citizenship is not required.....</p>	
<p>Point II. Ancillary Jurisdiction extends to the subject-matter irrespective of possession of the physical property.</p>	14 20
<p>Point III. The decision of the Circuit Court is contrary to the decisions of the United States Supreme Court.</p>	21

CASES CITED

Alexander v. Hillman, 296 U. S. 222, 80 L. Ed. 192, 56 Sup. Ct. 204.....	18, 19
Central Union Trust Company of New York v. Anderson County, Texas et al., 268 U. S. 93, 69 L. Ed. 862 (So. Dist. Texas).....	15, 20
Cincinnati, Indianapolis & Western Ry. Co. v. Indianapolis Union Railway Co., 70 L. Ed. 490, 270 U. S. 107 (1926 Ohio).....	20
Dugas v. American Surety Co. (1937), 300 U. S. 414, 421, 57 Sup. Ct. 515, 81 L. Ed. 720.....	20
Freeman v. Howe (1860), 65 U. S. 450 (24 How.), 16 L. Ed. 749.....	15
Hume v. City of New York (1918 C. C. A. 2), 255 Fed. 488, certiorari denied, 249 U. S. 603, 63 L. Ed. 797	15
Pell et al. v. McCabe et al., 256 Fed. 512 (C. C. A. 2, 1919, N. Y.), 168 C. C. A. 18, 254 Fed. 356, 250 U. S. 573, 63 L. Ed. 1147.....	20
State of Oklahoma v. State of Texas, 258 U. S. 574, 66 L. Ed. 771, 52 Sup. Ct. 406 (1922).....	15
White v. Ewing, 159 U. S. 36, 15 Sup. Ct. 1018, 40 L. Ed. 67	15

STATUTES CITED

Judicial Code, Sec. 240(a) as amended by Act of February 13, 1925, 43 Stat. 938, 28 USCA, 347(a)	6, 9
--	------

Supreme Court of the United States
(OCTOBER TERM, 1944).

NO.

OILS, INC., an Oklahoma corporation,
Petitioner,

V E R S U S

G. T. BLANKENSHIP; DAISY O. BLANKENSHIP, wife of G. T. Blankenship; E. S. HANSBERGER; M. E. TRAPP; DEAN M. STACY; HAROLD F. YOUNG; LOU SHEPHERD; TRAPP & BLANKENSHIP, a co-partnership composed of M. E. Trapp and G. T. Blankenship; NATIONAL BOND & MORTGAGE Co., an Oklahoma corporation; ROYALTY HOLDING Co., a Delaware corporation; ROYALTY SERVICE CORP., LTD., a Delaware corporation; and EQUAL ROYALTY Co., a Delaware corporation,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE TENTH CIRCUIT,
AND SUPPORTING BRIEF**

This action is the outgrowth of the decree and orders rendered in the class action of *Hopler et al. v. Farmers Mutual Royalty Syndicate, Inc.*, and *Oils, Inc. et al.*, No. 461 Civil, in the United States District Court for the Western District of Oklahoma.

That action is a class action in equity by eight minority stockholders of the Farmers Mutual Royalty Syndicate, Inc. (hereinafter referred to as "Farmers Mututal"), filed against the parent corporation, Farmers Mutual, the subsidiary corporation, Oils, Inc. (hereinfater referred to as "Oils"), and the officers of these corporations individually.

The action had for its purpose the recovery of assets wrongfully taken by the corporate officers; the re-establishing of those assets in the corporations, and the removal of the corporate officers.

The action resulted in a decree favorable to the petitioners directing the return of corporate properties, rendering judgments against certain corporate officers, and further directing the reorganization of the corporations' officials (R. 30-40). Part of the results were accomplished by the decree in No. 461. The election of new officers was accomplished by a receiver appointed by the court for that purpose, whose office was terminated by order of the court upon the completion of the reorganization of the boards of directors (R. 44-45).

At all times since the filing of the parent case, No. 461, the trial court in that action has specifically retained jurisdiction of the subject-matter of that case by its decrees and orders (Decree, R. 40; Order, R. 44-45).

During the process of hearing evidence on the principal issues in Case No. 461, facts not available to the petitioners at the time of the commencement of the trial of that case, involved other corporate officers of the two

corporations, who had previously resigned, and were not at that time members of the official families; and involving also additional new corporations controlled by those former officers (R. Decree 38-39).

The trial judge, Bower Broaddus, directed the receiver to make investigation of the additional facts developed during the trial of Case 461, and to present the results of the investigation to the court for its direction (R. 38).

Upon the presentation of the receiver's report, trial judge, Bower Broaddus, ordered this present action commenced under the style of "*F. M. Petree, Receiver of Farmers Mutual Royalty Syndicate, Inc., and Oils, Inc. v. G. T. Blankenship et al.*, No. 1181 Civil," as an ancillary action in the same court in which the principal action was, and still is, pending (R. 41-42).

At no time were the corporations insolvent, and the receiver was in office for the primary purpose of reorganization of the corporate officers.

When the receiver had completed the reorganization of the corporate officers by conducting stockholders' meetings, he made his report and was discharged. The trial judge in the parent action specifically retained jurisdiction of these proceedings filed by the receiver in accordance with the orders and decree in the parent action (R. 44-45).

The new officers and directors serving under the power and control of the trial court in No. 461 are still subject to that court's orders, control or removal (R. 44-45).

Honorable Bower Broadus is the roving judge for the United States District Courts in Oklahoma. His docket was heavily burdened and an additional judge was provided by Congress for the Western District of Oklahoma.

Upon the appointment of that judge, the Honorable Stephen S. Chandler, this present ancillary case was transferred to the docket of the Honorable Judge Chandler.

Judge Broadus still retains jurisdiction in the parent case, No. 461, passing on the continuing processes in that case.

The proceedings in Case 461, *Hopler et al. v. Farmers Mutual and Oils et al.*, were by reference made a part of the present action, *Oils, Inc. v. Blankenship et al.*, No. 1181. This case against the former officers and their companies, involves the same frauds and properties referred to in the subject-matter of the petition and decrees in 461 (R. 2-14, R. 38-39).

Upon the termination of the office of receivership, but with continuing control retained by Judge Broadus in Case No. 461, the name of the receiver was stricken from the petitioners named in the present action, No. 1181 (R. 17).

The new defendants then challenged the jurisdiction of the trial court to proceed in the present action on the

grounds of lack of diversity of citizenship, Oils being an Oklahoma corporation. Trial Judge Chandler dismissed the case, holding that the jurisdiction had been lost upon the termination of the receivership (R. 45).

Oils appealed to the Tenth Circuit Court and submitted that the trial court in the parent case does not lose jurisdiction of the subject-matter or nullify its decrees and orders, by terminating the office of the receiver, temporarily installed to accomplish part of the court's process where the court in the parent case retains jurisdiction and proceeds by other means to effect the results provided for by that court's orders and decrees in collecting the properties of the stockholders in the parent action.

The Circuit Court of Appeals for the Tenth Circuit held contrary (R. 49-53).

II. DECISIONS BELOW

The trial court in Case 1181 dismissed that action for want of jurisdiction upon the 22nd day of November, 1943 (R. 45). The opinion of the Tenth Circuit Court of Appeals was filed October 25, 1944 (R. 49-53), and has not yet been officially reported. Mandate was stayed in the Circuit Court November 27, 1944, for thirty days (R. 45).

III. JURISDICTION

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 938, 28 USCA, Sec. 347(a).

IV. QUESTIONS PRESENTED

(1) Did the trial court in the parent action lose jurisdiction of the subject-matter, and its power to enforce its orders and decrees in an ancillary action, commenced under the orders and directions of the trial court in the parent action, and over which the judge in the parent case specifically retained jurisdiction, by ceasing to act through a receiver and by continuing to enforce its judgments and decrees through corporate officers acting under the orders and directions of the court in the parent case?

(2) Is a federal court of equity limited to acting through a receiver in the process of recovering properties

while enforcing the court's equity decrees in an ancillary action, brought to complete the relief provided in the parent case decrees?

**V. REASONS RELIED UPON FOR THE
ALLOWANCE OF THE WRIT**

The reason for the allowance of the writ of certiorari is as follows:

(1) The Circuit Court of Appeals has decided an important question of federal equity jurisdiction contrary to the decisions of the United States Supreme Court.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Tenth Circuit should be granted.

HAL WHITTEN,
1030 Hightower Building,
Oklahoma City, Oklahoma,
Attorney for Petitioner, Oils, Inc.

WHITTEN & WHITTEN,
Of Counsel.

CERTIFICATE

I hereby certify that I have examined the foregoing petition and that in my opinion it is well founded and entitled to the favorable consideration of this Court, and that it is not for the purpose of delay.


Attorney for Petitioner.

Dated: Oklahoma City, Oklahoma,
December ¹⁴~~7~~, 1944.

